Supreme Court, U.S.
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IN THE

Supreme Court of the United States

WILLIE WHITE and CLARENCE MCCURDY, individually and on behalf of all persons similarly situated,

Petitioners,

v.

METROPOLITAN LIFE INSURANCE COMPANY, INC., SEARS ROEBUCK COMPANY, INC. and ALLSTATE INSURANCE COMPANY INCORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Employee Retirement Income Security Act ("ERISA") is a statutory scheme designed to protect employee pensions and other benefits by providing insurance, specifying certain plan characteristics in detail and setting forth certain general fiduciary duties applicable to the management of both pension and nonpension benefits plans. ERISA further requires a fiduciary, whether the plan administrator or employer, to discharge those duties solely in the interest of the participants and beneficiaries. This Court has interpreted the provisions of ERISA relating to fiduciary duties to mean that the fiduciary is obligated to communicate accurate information to beneficiaries about the terms of the plan, including terminating and amending the terms, and must not profit at the expense of the beneficiary.

1. The question presented for review in this regard is whether the Eleventh Circuit Court of Appeals, in affirming summary judgment entered by the district court in favor of the Respondents, failed to heed or apply the principles of ERISA as interpreted by this Court, when the Respondents miscommunicated and/or failed to communicate information about the plan to the Petitioners; altered, amended and eliminated certain coverage provisions to the detriment of the Petitioners; and sought to create a substantial financial hardship on the Petitioners and other similarly situated persons in the event of total disability.

Rule 56 of the Federal Rules of Civil Procedure provide that summary judgment is appropriate only when no genuine issues of material fact exist. The burden of proof lies with the movant for a judgment of a matter of law, which is rarely appropriate when expert testimony is presented to create factual questions.

2. The question presented for review as to this issue is whether the Eleventh Circuit, in affirming the district court's grant of summary judgment in favor of the Respondents, when the Petitioners submitted an undisputed and uncontroverted expert opinion demonstrating the multiple breaches of fiduciary duties by the Respondents in administering, distributing, altering and eliminating certain provisions of the long-term disability plan, so far departed from the well-entrenched rules of federal judicial procedure that this Court should review the record and the evidence and reverse the judgment.

LIST OF PARTIES

The parties to this action include Clarence McCurdy and Willie White, individually, and on behalf of all similarly situated disabled employees who have received demands from Metropolitan Life Insuarance Company, Inc. for lump-sum reimbursements of alleged overpayments of long-term disability benefits.

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The Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The district court's opinion (per U.W. Clemon) granting the Respondents' summary judgment motion is not published, but is reprinted and attached to this brief as Appendix B. The order of the Eleventh Circuit Court of Appeals (per curiam) affirming the district court is published as *White v. Metropolitan Life Ins.*, 254 F.3d 75 (11th Cir. Apr. 30, 2001), and is attached as Appendix A. The order denying the application for rehearing, entered on June 6, 2001, is not published and is attached as Appendix C.

STATEMENT OF JURISDICTION

On April 11, 2000, the district court entered an amended and final summary judgment against the Petitioners and in favor of the Respondents. The Eleventh Circuit upheld the district court's decision on April 30, 2001, and denied rehearing on June 6, 2001. This Petition is timely filed pursuant to Supreme Court Rule 13 within 90 days thereof. This Court has jurisdiction to review the decisions of the Eleventh Circuit Court of Appeals pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of the Employee Retirement Income Security Act, 29 U.S.C. § 1100 *et seq.* ("ERISA") relevant to this petition include the following:

29 U.S.C. § 1102(21)(A) defines an ERISA fiduciary with respect to the plan as "someone who has any discretionary authority over the administration of the plan."

29 U.S.C. § 1104(a)(I)(A) & (B) provides that

> a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries . . . for the exclusive purpose of . . . providing benefits to participants and their beneficiaries . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of enterprise of a like character and with like aims.

29 U.S.C. § 1109(a) prescribes remedies for breaches of fiduciary duties by stating that "any fiduciary who breaches its responsibilities shall be personally liable to return any losses incurred as a result of the breach to the plan."

STATEMENT OF THE CASE

This case arises from the granting of summary judgment in favor of the Respondents, Sears, Roebuck and Company, Inc. ("Sears"), Allstate Insurance Company, Inc. ("Allstate"), and Metropolitan Life Insurance Company, Inc. ("MetLife"), and against the Petitioners, Clarence McCurdy, Willie White and other similarly situated class members. Mr. McCurdy and Mr. White contend that a substantial loss of expected income in the event of disability has occurred as the result of the Respondents' unlawful changes in their long-term

disability policy. It is alleged that these losses in expected income have occurred in hundreds of other instances and will continue to cause substantial losses of disability income to hundreds, perhaps thousands, of Sears' employees in the future.

Review of the Eleventh Circuit's judgment by this Court is necessary to ensure that legal precedent, as it relates to ERISA fiduciaries, is appropriately applied to the facts of this case and to remedy the Eleventh Circuit's abandonment of well-entrenched legal principles of judicial procedure regarding summary judgment.

1. Petitioners are participants in a long-term disability policy of insurance issued by their former employer, Sears, and governed by ERISA. Initially, Sears provided long-term disability benefits to its employees through a contract of insurance underwritten by Allstate until MetLife assumed coverage in January of 1989. Shortly before January 1989, Sears submitted a notice to all its employees announcing that MetLife would be the new insurer of the Sears' long-term disability plan. This notice provided that "there would be no changes in the amount of long-term disability insurance." Although neither Mr. McCurdy nor Mr. White recollect receiving this document, the Sears' personnel department assured them that there would be no changes in coverage.[1]

In contrast to these representations, however, a close examination of the MetLife Plan reveals several critical

1. In September of 1994, Mr. McCurdy received a letter from Sears' Human Resource Center stating that "your long-term disability benefits will continue as long as you remain totally disabled and do not exceed the maximum plan benefit."

changes in coverage. For instance, the MetLife policy provides that if Social Security benefits are received within the twelve-month period following cessation of long-term disability benefits, but the Social Security benefits are not approved retroactive to the **exact time long-term disability benefits were payable**, as determined by MetLife, then the beneficiary can not receive his long-term "total disability" benefits. This is true even if the beneficiary was "totally disabled" and has not worked since his disability. If the Social Security retroactive award of benefits is only slightly later than MetLife's deadline of when long-term disability benefits are payable, then MetLife is not obligated to pay long-term disability benefits.[2]

The following table represents a concise comparison of significant discrepancies between the Allstate and MetLife policies:

	ALLSTATE POLICY	MetLife POLICY
Criteria for Total Disability during the first 12 months after the waiting period.	Due to illness or injury, Participant is unable to perform the material duties of his or her occupation with Sears.	Because of illness or injury, Partici- or her job, or any other job for which he or she is fit based on education, training or experience.

2. An affidavit from Social Security Disability Attorney, Darryl W. Hunt, advises that on average, Social Security Disability determinations take at least two and a half years to conclude, although it is not unusual for a claim to be pending for more than three years.

Criteria for Total Disability after the first twelve months after the waiting period.	Due to illness or injury, Participant is unable to perform the material duties of any gainful occupation for which he or she is reasonably fit, based on training, education or experience.	Due to illness or injury, Participant cannot do his or her job, **or any other job for which he or she is fit based on education, training or experience**, and the Participant has been approved to receive Social Security disability benefits either during **the first 12 months of LTD benefits, or (in the case of a Social Security disability benefit approval that is retroactive to the first date of LTD benefit payments)**, during the 12 months after the LTD benefit is ceased.

Mr. McCurdy was an employee of Sears for eighteen years until he became totally disabled in April of 1993 as a result of a brain tumor.[3] He had been a participant in, and paying premiums on the disability plan, either under the

3. Mr. McCurdy has undergone three brain operations since April, 1993.

Allstate of MetLife policies, for approximately twelve years before his disability. On or about September 16, 1993, Mr. McCurdy applied for disability benefits under the MetLife Plan and began receiving payments each month beginning on or about October 7, 1993, for the next twenty-four months. On or about October 7, 1993, Mr. McCurdy received a letter from MetLife stating that MetLife claimed the right to stop payment of his long-term disability unless he was approved to receive Social Security benefits by the end of a twenty-four month, long-term disability period.

At the end of twenty-four months, Mr. McCurdy had not received his Social Security Disability benefit decision and MetLife terminated his benefits in September or October of 1995. It was not until May of 1996, that Mr. McCurdy received his Social Security Disability award letter. Therefore, he was without any financial support, either through Social Security Disability or the MetLife Disability Plan, for approximately five months. Once his claim for Social Security Disability was approved, MetLife informed Mr. McCurdy by letter that his long-term disability benefits claim was reinstated effective October 1, 1995. However, a subsequent letter from MetLife advised him that there had been an overpayment on his claim in the amount of $31,872.00 and demanded payment in thirty days.

Similarly, Mr. White, who was an employee of Sears for nine years before he became totally disabled in September of 1992, applied for disability benefits on September 29, 1992 and began receiving monthly benefits. On April 29, 1994, however, MetLife also informed Mr. White that his award of Social Security Disability Insurance had resulted in an overpayment of benefits and demanded a lump-sum reimbursement of $15,658.39. MetLife told Mr. White that future benefits would be withheld until the money was received.

In each instance, Mr. McCurdy and Mr. White received notices from MetLife that their monthly payments were reduced to less than $100.00 ($35.00 in the case of Mr. White), upon the granting of Social Security Disability and that lump-sum reimbursement payments were required. There are approximately 1,800 disabled employees who received these demands from MetLife for lump-sum reimbursements of "overpayments" and approximately 130,000 Sears employees bound by the changes in the MetLife Plan for disability benefits. Since January 1, 1989, fifty-three other Sears employees have filed suits relating to disability benefits claimed under the MetLife Policy.

2. The Petitioners contend that MetLife, with Sears' approval, made material and damaging changes to the Allstate policy which resulted in substantial loss of expected income in the event of disability. As a consequence, Mr. McCurdy and Mr. White filed Complaints along with Petitions for Class Actions in the Circuit Court of Greene County, Alabama on September 11, 1996. The Respondents removed the case to the United States District Court for the Northern District of Alabama on October 23, 1996, where the Petitioners amended their Complaints to state claims for violation of and breach of fiduciary duties under ERISA.

The Petitioners also maintain, among other things, that altering the requirements for disability and the manner in which disability claims are administered and reviewed and eliminating any recovery for partial disability benefits make the MetLife Plan unconscionable. To support their position, the Petitioners submitted the affidavit testimony of James A. Hand, who offered his undisputed expert opinion regarding the multiple provisions of the MetLife Plan that are unconscionable. The Petitioners also allege that the

MetLife Plan is void *ab initio* due to the failure of the Respondents to amend the disability plan without following the prescribed corporate procedures.

3. The district court rejected all of the Petitioners' claims, holding that the Sears' long-term disability plan, whether administered by Allstate or MetLife, reserved the right for the administrator to alter, amend or terminate the terms of the plan. The district court also found to be significant the fact that both the Allstate and MetLife plans required repayments of Social Security Disability benefits. Therefore, in response to the Respondents' counterclaim, the lump-sum reimbursements were ordered to be paid by the Petitioners and final summary judgment was granted as to all claims against the Respondents.

4. On appeal to the Eleventh Circuit, the Petitioners sought review of the district court's final order of judgment on the grounds that the record contained numerous questions of fact that remained undisputed by the Respondents and that the district court's decision disregarded the law established by this Court as it applies to ERISA fiduciaries of employee long-term disability benefit plans. After oral arguments were made, the Eleventh Circuit affirmed the district court decision, without an opinion. Application for rehearing was subsequently denied, again with no opinion.

5. This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

The petition should be granted for two reasons. *First*, the Eleventh Circuit's judgment is in conflict with the holding of this Court and *second*, the entry of summary judgment when the Petitioners presented an uncontroverted expert affidavit in opposition to the motion, runs afoul of the rules of federal judicial procedure.

I. The Decision Below Conflicts With Decisions Of This Court.

MetLife ceased Mr. McCurdy's benefits for a period of five months. This right to terminate benefits is in conflict with the provision describing the maximum benefit period, which indicates that monthly benefits will be paid continuously up to a maximum benefit period of age sixty-two or sixty-five, with no indication that there might be gaps in the coverage during which benefits would be suspended because an award of Social Security benefits had not been obtained.

In *Varity Corporation v. Howe*, 516 U.S. 489, 116 S. Ct. 1065 (1996), the United States District Court for the Southern District of Iowa (per Donald E. O'Brien, Chief Judge) entered a preliminary injunction requiring the defendants to reinstate portions of terminated employee welfare benefit plan. The district court found that the employer and owner, acting as ERISA fiduciaries, harmed plan beneficiaries through deliberate deception. The Court of Appeals (Lay, Chief Judge) affirmed in part and reversed in part and subsequently affirmed as modified (per Arnold, Chief Judge).

In *Varity*, a group of beneficiaries of a firm's ERISA benefit plan sued their employer who was acting in the capacity as plan administrator. The employees claimed that the employer deceived them and led them to voluntarily withdraw from the ERISA plan and relinquish their plan benefits. Originally, the employees were beneficiaries of a plan administered by Massey-Ferguson, a subsidiary of Varity Corporation. During a reorganization program, Varity transferred Massey-Ferguson's money-losing divisions into a newly formed subsidiary called the Massey Combines.

During reorganization, Varity induced the Massey-Ferguson employees to voluntarily "switch employers", thereby substituting the new Massey Combines' benefit plan for the former Massey-Ferguson plan in which the employees were previously enrolled. During a special meeting, Varity told the employees that in "switching" plans, their benefits would remain secure and essentially unchanged. It was not revealed to these employees that from its creation, Massey Combines was insolvent.

This Court (per Justice Breyer) granted certiorari and held that: (1) the employer was acting as an ERISA fiduciary when it misled employees regarding the security of their benefits if they transferred; (2) the employer violated fiduciary obligations of ERISA in **misleading** employees; and (3) ERISA authorized lawsuits for individualized equitable relief. With specific reference to the issue of fiduciary responsibility of a plan administrators, this Court commented:

> ERISA requires a "fiduciary" to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries." ERISA

> § 404(a). To participate knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries expense it not to act "solely in the interest of the participants and beneficiaries."

Varity, *supra*, at 1074-75 (citations omitted).

In determining and administering benefits under the policy in the case at hand, the Respondents were required to do so in a manner consistent with the best interest of the plan beneficiaries. Mr. White and Mr. McCurdy were informed about the new MetLife plan, however, the substance of this information mistakenly assured that there would be **no change in coverage**. The misrepresentation about the coverage available under the disability plan destroys any mutuality of agreement between the plan beneficiaries and plan administrator rendering the MetLife policy void and the Respondents in breach of their fiduciary duties.

Additionally, the terms of the MetLife policy relating to the recovery of long-term disability benefits have been declared ambiguous and confusing to both the plan administrators and insurance industry experts. The videotape presented to the Sears' employees subject to the disability policies demonstrates the deceptive and misleading tactics utilized in reference to the reduction of benefits due to set-offs. The provisions relevant for this appeal were substantively changed and not appropriately communicated to Mr. White and Mr. McCurdy, resulting in an ineffective and unenforceable policy and constitute a violation of the Respondents' fiduciary obligation.

Furthermore, the undisputed evidence reveals that the changes in the MetLife insurance policy benefited the insurance at the expenses of the plan beneficiary. For example, by recovering the set-offs from Social Security and Workers' Compensation, the employee, who is solely responsible for premium payments to the policy, receives no meaningful benefit for the years of monthly contributions to fund the full cost of the benefits. Not only is there little or no risk to the insurance company because it is guaranteed a virtual complete recovery of benefits paid, but the lump-sum payment requirement of the modified MetLife plan imposes an undue and unjust hardship to the recipient of disability benefits.

Again, despite the duty to act in the best interest of the plan beneficiary, the evidence discloses that the Respondents were aware that these changes in the MetLife policy resulted in financial difficulties to Sears' employees. This blatant disregard of the welfare and security is a violation of ERISA and unconscionable according to every legal principle of contract creation and administration and in direct conflict with the legal principles set forth by this Court in *Varity* and its progeny.

The Respondents have made no attempt to distinguish the *Varity* opinion. In the present case, the Eleventh Circuit did not consider or apply the authority established in *Varity*, which has been recognized and followed by the majority of circuits, including the Eleventh Circuit. Therefore, the judgment of the Eleventh Circuit as it relates to the responsibilities and obligations of fiduciaries in administering and determining long-term disability benefits merits a review by this Court and reversal.

II. The Decision Below Has So Far Departed From The Usual Course Of Judicial Proceedings To Warrant This Court's Supervisory Power.

Summary judgment is proper only if there are no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), Federal Rules of Civil Procedure; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986). The burden rests upon the movant to show there are no genuine issue of material fact. As this Court has provided, in reviewing a summary judgment, the unchallenged testimony provided by the Petitioners must be taken as true. *See Bragdon v. Abbott*, 524 U.S. 624, 118 S. Ct. 2196, 2207, 141 L. Ed. 2d 540 (1998).

In this case, the Petitioners submitted undisputed expert testimony regarding the patently unconscionable provisions in the MetLife disability policy and lend further support for the proposition that the Respondents acted in violation of ERISA by breaching their fiduciary responsibilities. Specifically, James A. Hand, a certified life underwriter and insurance consultant with over forty years of experience with long-term disability contracts, provided his opinions in opposition to the Respondents' summary judgment motion. Based upon his experience, background and training, Mr. Hand's conclusions, excerpted in part from his affidavit, include the following:

> 1. Even though the printed notices that were allegedly communicated to the Sears' employees indicated that there would be no substantial change in the policies or benefits when the long-term disability policy was assumed by MetLife

from Allstate, there were substantial and material changes as follows:

a. MetLife changed the definition of "Total Disability".

b. MetLife eliminated any partial disability benefits.

c. MetLife changed the way in which the disability claims were administered in that the Allstate policy provides that they had the right to recover excess payments by applying all or part of future payments until the excess was recovered MetLife contract provides that any overpayment must be made in a lump sum. This difference could work a substantial hardship on employees who had to make reimbursements. Again, none of this was ever explained to employees until a claim arose.

2. Further, the communication, in general, to the higher personnel about the long-term disability changes were completely inadequate. A letter from JoAnne Cunningham to Human Resources Manager, dated 7/9/92, admits confusion, even at this higher level of communications, about the effective date of the Social Security off-set handling.

3. Another example of the hardships perpetrated against the employees, as a result of the changes made by MetLife, are indicated in a letter from Marsha Dalton to Human Resources Manager, dated 5/27/92, wherein it was admitted that the MetLife system of claim paying caused the Sears' employees financial difficulties.

4. Further, the contract involving the MetLife long-term disability plan is unconscionable for a number of reasons. The plan is more or less an obsolete type of plan in that the wording is ambiguous and confusing to a layman and in many ways the benefits are illusory because the off-sets from Social Security and Worker's Compensation practically eliminate any meaningful benefit ($35.00 per month minimum is included in the plan) to employees who are not in a high income category. The fact that this policy is entirely paid for by the employee (and no contributions by the employer) make it further unconscionable because the employee is paying for something that he thinks he has (*i.e.*, wage replacement) but because of the off-sets, he receives virtually nothing and there is very little risk, if any, to the defendant insurance companies involved. Therefore, it is my opinion, that if the employees knew and completely understood these off-sets and other provisions, it is highly unlikely that the employees would pay insurance premiums for such coverage.

5. Another indication of how unconscionable the MetLife contract is, and one in which the public good was ignored, is evidenced by the fact

that in the custom, trade, and business of writing long-term disability insurance policies, the usual practice is for the insurance companies to be paid back out of future payments in the event that there is an off-set from Social Security or Worker's Compensation. Such was not the case in the MetLife contract.

6. Additionally, the Allstate contract was unconscionable because the plan is also obsolete in that the wording is ambiguous and confusing and the Worker's Compensation and Social Security offsets practically eliminate any meaningful benefits to employees who are not in a high income category. Again, the fact that the employees pay the full cost to fund the benefits (which are practically eliminated in some cases) makes the plan unconscionable.

7. Further, in observing and evaluating a video tape purportedly shown to employees that participated in both Allstate and MetLife long-term disability policies, the portion of the tape that deals with long-term disability is misleading and/or confusing with reference to the reduction of benefits after receiving Social Security Disability Benefits. Although barely touched upon in the film, one would conclude that the reduction in long-term disability would only occur after Social Security *Retirement* benefits after the age sixty-two or sixty-five. Even though this film was shown to employees who had MetLife policies issued after 1989, they were not informed of the changes. The MetLife long-term disability

> contract is also unconscionable because of the material changes which MetLife attempted to make. The MetLife long-term disability contract is misleading in that, after representing in notices to the Sears' employees, that there would be "no change in the amount of long-term disability insurance", it was "gutted" by material changes as set forth above.

The Eleventh Circuit itself has embraced the principle which discourages summary judgment in cases where expert testimony is relied upon to illuminate the issues of fact in the case. *See Childers v. Morgan County Board of Education*, 817 F.2d 1556 (11th Cir. 1987); *City of Tuscaloosa v. Harcros Chemicals, Inc.*, 158 F.3d 548, 551 (11th Cir. 1998). In fact, in the present case, there is not a conflict of expert testimony that creates questions of fact, rather, the Respondents have offered no evidence or testimony to rebut or dispute any of Mr. Hand's findings or conclusions.

In consideration of the spirit and application of the Federal Rules of Procedure with regards to judgments as a matter of law, the evidence in the record submitted by the Petitioners is more than sufficient to defeat the Respondents' motion for summary judgment. If Mr. Hand's opinions are taken to be true and viewing the evidence in a light most favorable to the Petitioners, as the law requires the Court to do, the entry of summary judgment was improvidently granted by the district court and affirmed by the Eleventh Circuit. Such a departure from the fundamentals of judicial procedure merits a review and examination of the evidence by this Court.

CONCLUSION

In consideration of the above and foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — PER CURIAM ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED APRIL 30, 2001

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-15505

D. C. Docket Nos. 96-02781-CV-C-W
96-02782-CV-C-W

WILLIE WHITE, individually and on behalf of all persons similarly situated,

Plaintiff-Counter-defendant-Appellant,

CLARENCE MCCURDY,

Plaintiff-Appellant,

versus

METROPOLITAN LIFE INSURANCE COMPANY, INC., a corporation,

Defendant-Counter-claimant-Appellee,

SEARS ROEBUCK COMPANY, INC., a corporation, ALLSTATE INSURANCE COMPANY INCORPORATION, a corporation,

Defendants-Appellees,

LINDA TUCKER, an individual citizen of the State of Alabama, DEBRA WILLIAMS, an individual of the State of Alabama,

Defendants.

Appendix A

Appeal from the United States District Court
for the Northern District of Alabama

(April 30, 2001)

Before DUBINA and KRAVITCH, Circuit Judges, DUPLANTIER*, District Judge.

PER CURIAM:

AFFIRMED. *See* 11th Cir. R. 36-1.[1]

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* Honorable Adrian G. Duplantier, U.S. District Judge for the Eastern District of Louisiana, sitting by designation.

1. 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e) judgment has been entered without a reversible error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, WESTERN DIVISION GRANTING SUMMARY JUDGMENT DATED AND FILED MARCH 31, 2000 AND ENTERED APRIL 3, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

CV-96-C-2782-W

CLARENCE MCCURDY, individually, and on behalf of all persons similarly situated,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE COMPANY, INC., a corporation, et al.,

Defendants.

CV-96-C-2781-W

WILLIE WHITE, individually, and on behalf of all persons similarly situated,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE COMPANY, INC., a corporation, et al.,

Defendants.

Appendix B

MEMORANDUM OPINION GRANTING SUMMARY JUDGMENT

I. *Introduction*

In this putative class action under the Employee Retirement Income Security Act, 29 U.S.C. § 1100 *et seq.* ("ERISA"), the named plaintiffs Clarence McCurdy and Willie White essentially claim that to their detriment, Defendant Metropolitan Life Insurance Company ("MetLife") and their former employer, Defendant Sears, Roebuck & Company, Inc. ("Sears") made unilateral changes in the Long Term Disability ("LTD") Benefit Plan when Sears switched to MetLife from Defendant Allstate Insurance Company (Allstate), as its carrier. At the core of the Complaint is the contention that the monthly disability benefits of the Plaintiffs are now subject to reduction by the amount of Social Security disability income received as a result of their disability. Defendants have moved for summary judgment. Based on the undisputed facts, the motion is due to be granted.

II. *The Undisputed Facts*

1. Plaintiffs McCurdy and White were participants in a long-term disability benefits plan administered by their Sears.

2. Until December 31, 1988, Allstate served as the claims administrator and insurer of the Sears LTD Benefits Plan.

3. Under the LTD Plan administered by Allstate, it is expressly provided, in the bold section entitled,

Appendix B

"PLAN AMENDMENT AND TERMINATION," that "Although Sears intends to continue the Plan, the Company necessarily reserves the right to modify, amend, suspend, or terminate it at any time." *See* Court File Document 50, Exhibit D.

4. The Allstate-administered Plan also contains the following provision:

AMOUNT OF MONTHLY BENEFIT WHILE TOTALLY DISABLED

> "The monthly benefit payable from the Plan while you are Totally Disabled will not be less than $35 unless Allstate has made payments in excess of the amount actually payable under these LTD Provisions. **Then Allstate has the right to recover the excess by applying all or part of future monthly benefits until the excess has been recovered.**"

See Court File Document 50, Exhibit D.

5. As of January 1, 1999, MetLife became the insurer and administrator of the Sears Plan.

6. The Sears Plan, as administered by MetLife, provides, *inter alia*:

> "REHABILITATIVE EMPLOYMENT
>
> For dates of disability beginning on or after March 1, 1989,

Appendix B

(A) The amount of Monthly Benefits [shall be] the lesser of

– 50% of the first $12,500 of Monthly LTD Covered Earnings, less 50% of any Rehabilitation Earnings, if any, or

– 60% of your Monthly LTF Covered Earnings, **less (a) any Other Income to which you are entitled** and (b) 50% of your Rehabilitation Earnings, if any.

If the sum of your monthly benefit and your Other Income and/or Rehabilitation Earnings is greater than your Monthly LTD Covered Earnings at the time that you became disabled your Monthly Benefit will be reduced so that the sum will not exceed your Monthly Covered LTD Earnings."

See Rider to MetLife Policy entitled "Notice of Changes to Sears Group Long-Term Disability Insurance," Document 50, Ex. "C." (emphasis added).

7. The changes in the Sears Plan accompanying its switch to MetLife were distributed in 1989 to all of the Plan's participants, including Plaintiffs.

8. Plaintiff White applied to the Sears Plan for LTD benefits on September 29, 1992. His application was approved on October 18, 1992 effective retroactively to September 8, 1992. He began receiving the full formula amount of those benefits immediately.

Appendix B

9. White also applied for Social Security disability benefits. On March 15, 1994, the Social Security Administration determined that White was disabled; and it awarded him $15,148 retroactively and $968 thereafter in monthly benefits.

10. After White's Social Security award, MetLife reduced his Plan benefits and sought reimbursement from the retroactive Social Security award.

11. Plaintiff McCurdy filed his application for LTD benefits with MetLife on September 16, 1993. His application was subsequently approved; and his LTD benefits commenced in September of 1993.

12. In February of 1996, the Social Security Administration determined that McCurdy became disabled on April 20, 1993. It awarded him $37,050 in retroactive benefits and $1,196 monthly thereafter.

13. After McCurdy's Social Security award, MetLife reduced his Plan benefits and sought reimbursement from his retroactive Social Security award.

14. When Plaintiffs separately applied for Sears LTD benefits, each of them signed a MetLife agreement to this effect:

> I understand that the plan provides that the amount of Social Security benefits, as described in the Group Plan, for which I or any of my dependents may be eligible, **are to be deducted from the benefits payable under the plan**.

Appendix B

> I agree to send a copy of any award or declination letter received from the Social Security Administration to the Metropolitan Life Insurance Company and **will reimburse such Company in the amount due**, upon commencement of benefits awarded to me under the Social Security Act. Such reimbursement shall cover the period from the date of entitled benefits to and including the date of benefits last paid to me.

See "Reimbursement Agreements," Def. Metropolitan Life Ins. Co.'s and Allstate Ins. Co.'s Supp. Mem. in Support of Mot. for Summ. J. Ex. 1. (emphasis added).

II. *Controlling Legal Principles*

A. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

The moving party bears the initial burden of showing that there is an absence of a genuine issue of material fact. For issues on which the non-movant bears the burden of proof at trial, the moving party simply may show that there is an absence of evidence to support the non-moving party's case. Alternatively, the moving party may support its motion for summary judgment with affirmative evidence demonstrating that the non-moving party will be unable to prove its case. *See Sherman v. Helms*, 80 F.Supp.2d 1365, 1369 (M.D. Ga.

2000) (citing *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1116 (11th Cir. 1993)).

If a moving party makes a prima facie showing that no genuine issue of material fact exists, then the burden shifts to the non-movant to overcome that showing by presenting substantial evidence in support of its motion. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). All evidence and reasonable factual inferences drawn therefrom are viewed in the fight most favorable to the party opposing the motion. *See Glitz v. Compagnie Nationale Air France*, 129 F.3d 554, 556-57 (11th Cir. 1997).

B. OTHER PRINCIPLES

ERISA is a comprehensive and reticulated statute that created a framework for the administration and maintenance of private employee benefit plans. *See Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 361 (1980). Although the statute delineates a myriad of detailed procedural requirements for a plan's implementation and administration, one principle is unequivocally clear: ERISA maintains *no* minimum substantive content for employee welfare benefit plans, and therefore a district court has no authority to draft the substantive content of such plans. *See Hunt v. Hawthorne Associates, Inc.*, 119 F.3d 888, 911 (11th Cir. 1997) (citing *Hamilton v. Air Jamaica Ltd.*, 945 F.2d 74,78 (3rd Cir. 1991). Congress sought to discourage judicial entanglement with the substantive features of ERISA-regulated welfare benefit plans because presumably parties retain a greater degree of freedom to contract between themselves to determine the type and amount of benefits,

and the conditions under which these benefits will be provided under the plan. *See Jordan v. Reliable Life Ins. Co.*, 694 F. Supp. 822, 832 (N.D. Ala. 1998) (citing *Vogel v. Independence Fed. Sav. Bank*, 728 F. Supp. 1210,1229 (D. Md. 1990)).

Federal courts at every level have consistently held that it is outside the province of the judiciary to regulate the substantive terms of a welfare benefit plan. *See generally Metropolitan Life Ins. Co. v. Travelers Ins. Co.*, 471 U.S. 724, 736 (1985); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995); *First Capital Life Ins. Co. v. AAA Communications, Inc.*, 906 F. Supp. 1546, 1555 (N.D. Ga. 1995).

III. *Analysis*

Assuming that Sears and MetLife made unilateral changes in the Sears LTD Plan, ERISA does not empower this Court to grant the relief which Plaintiffs seek. The Plan itself confers on Sears the unilateral right not simply to change its terms, ***but to terminate the Plan itself***!

But more important is the consideration that the operative provision did not change. Under the Sears LTD Plan, whether administered by Allstate or by MetLife, beneficiaries must reimburse for payments covered by a subsequent retroactive Social Security award. In that key respect, nothing has changed.

As a last ditch effort to avoid summary disposition, Plaintiffs contend they were "unaware" that benefits paid

by the insurance company would be reduced by the amount of Social Security benefits subsequently paid to them. *See* McCurdy Aff. at 2 and White Aff. at 2. The documents signed by Plaintiffs belie this assertion. *See infra*, fn. 1. And it is now well established under Alabama law that a party has the affirmative duty to read and inspect any document which might affect that person's legal rights or liabilities. *See Ramp Operations Inc. v. Reliance Ins. Co.*, 805 F.2d 1552, 1556 (11th Cir. 1986).

Because Plaintiffs applied for and received social security benefits, the outcome of this case has been preordained by the signed reimbursement contracts. It follows that MetLife may recoup the LTD benefits it paid Plaintiffs while their social security applications were pending.

V. *Conclusion*

For the foregoing reasons, Defendants' Motion for Summary Judgment will be granted by separate order.

DONE this 31st day of March, 2000.

s/ U.W. Clemon
UNITED STATES DISTRICT JUDGE
U.W. CLEMON

APPENDIX C — PER CURIAM ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED JUNE 6, 2001

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 00-15505-DD

WILLIE WHITE, individually and on behalf of all persons similarly situated,

Plaintiff-
Counter-defendant-
Appellant,

CLARENCE MCCURDY,

Plaintiff-Appellant,

versus

METROPOLITAN LIFE INSURANCE COMPANY, INC., a corporation,

Defendant-
Counter-claimant-
Appellee,

SEARS ROEBUCK COMPANY INC., a corporation,
ALLSTATE INSURANCE COMPANY INCORPORATION, a corporation,

Defendants-Appellees,

Appendix C

On Appeal from the United States District Court for the Northern District of Alabama

BEFORE: DUBINA and KRAVITCH, Circuit Judges, DUPLANTIER*, District Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellants Willie White, et al. is DENIED.

ENTERED FOR THE COURT:

s/ Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE

* Honorable Adrian G. Duplantier, U.S. District Judge for the Eastern District of Louisiana, sitting by designation.